IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 285 OF 1988

Abdul Hamid Abdul Aziz Hodekar .. Petitioners

& ors.

vs

The State of Maharashtra & anr .. Respondents

Mr.Y.H.Muchala i/b Mr.Nuruddin Bhatkar for Petitioner nos. 1 to 3.

Mr.A.P.Vanarase, AGP for Respondent nos. 1 & 2.

CORAM : D.K.DESHMUKH AND

D.G.KARNIK, JJ

DATED : RESERVED ON:20TH JANUARY, 04

DELIVERED ON: 9TH MARCH, 04

Per D.G. Karnik, J.

1. By this petition, the petitioners challenge the notifications dated 10th December, 1987 and dated 13th October, 1999 issued by the Government of Maharashtra under sub-section 1 of section 4 of the

Maharashtra Marine Fishing Regulation Act, 1981 (for short the Act) prohibiting use of special type of fishing nets known as purse seine gear by mechanised fishing vessels within the territorial waters of the districts of Greater Mumbai, Thane, Raigad, Ratnagiri and Sindhudurg and further prohibiting mechanised fishing vessels operating perse seine gear beyond the territorial waters of the aforesaid districts to land the fish caught by such vessels in any port other than Mirkarwada Port in Ratnagiri district inter alia on the ground that the said notifications are violative of the petitioners' right udner Articles 14, 19 and 21 of the Constitution of India and on the ground that proper Advisory Committee was not constituted and proper consultations with the properly constituted committee were not held as required by the Act before issuance of the notifications.

2. The petitioners are fishermen residing in the coastal areas in Ratnagiri district of Maharashtra. They were cathing Pelagi Fish (which consists of mackerals, sardins, cannes, ghols etc) by using traditional vessels and traditional fishing nets. With the help of loans/subsidiaries given under the scheme of the State Government, the petitioners

procured mechanised fishing crafts and started using purse seine nets for fishing since the year 1980 or thereabout. Initially, there was no conflict between the traditional fishermen carrying on fishing with traditional nets in non-mechanised boats and the petitioners using purse seine nets in mechanised boats. The petitioners allege that due to local politics, some rift was developed between the users of the purse seine nets and traditional fishermen ; for pleasing the traditional fishermen the Government of Maharashtra issued the impugned notifications prohibiting the use of purse sein gear in the territorial waters of the entire coastal line of Maharashtra without holding proper consultations with properly constituted Advisory Committee as required under section 4 of the Act. The impugned notifications are also alleged to be violative of the petitioners' right guaranteed under Articles 14, 19 and 21 of the Constitution of India.

3. Section 3 and 4 of the Act read as under :

Section 3:

3. Constitution of Advisory Committees: (1) The State Government may by order constitute an Advisory Committee for each coastal District, with the District Magistrate as the Chairman and the Assistant Director of Fisheries of the District as the member-secretary, with representatives of the

State Port Department and the police Department as members. The Chairman shall co-opt representatives of other Government Departments and of the fishermen and the trade as he may deem fit. The Committee shall recommend to the State Government the regulations to be enforced under Chapter II.

(2) The Committee shall advise the State Government on the following issues which may come up for consideration while enforcing the Act :-

(i) reservation of specified areas of these for fishing by vessels of a specified type ;

(ii) prohibition of vessels of specified type or specified types from fishing in any specified area

(iii) laying down the maximum number of fishing vessels of specified type to be allowed for fishing in specified areas ;

(iv) laying down the maximum number of fishing vessels of specified types to be registered in each of the ports in the District;

(v) regulation or prohibition to catch specified species of fish in any specified area ;

(vi) regulation or prohibition of specified fishing gear in specified areas ;

(vii) prescribe timings for fishing operations where necessary ;

(viii) any other matter which would facilitate effective enforcement of the provisions of the Act,

Section 4:

Power to regulate, restrict or prohibit certain fishing activities within specified area: (1) The State Government may, having regard to the matters referred to in sub-section (2) and after consultation with the Advisory Committee by order notified in the Official Gazettee, regulate, restrict or prohibit, - (a) the fishing in any specified area by class or classes of fishing as may be specified ; or

(a) the fishing in any specified area by such class or classes of fishing vessels as may be specified ; or

(b) the number of fishing vessels which may be used for fishing in any specified area ; or

(c) the catching in any specified are of such species of fish and for such period as may be specified in the orders ; or

(d) the use of such fishing gear in any specified area as may be prescribed ;

(2) In making an order under sub-section (1), the State Government shall have regard to the following matters, namely :-

(a) the need to protect the interests of different sections of persons engaged in fishing, particularly those engaged in fishing using traditional fishing craft such as country craft or canoe ;

(b) The need to conserve fish and to regulate fishing on a scientific basis ;

(c) the need to maintain law and order in the sea ;

(d) any other matter that may be prescribed.

4. Section 4 of the Act, empowers the State Government, by an order published in the Official Gazzette to regulate restrict or prohibit, fishing in any specified area or the number of fishing vessels which may be used in any specified area or use of specified fishing gear in any specified area as may be prescribed.

In purported exercise of thepower conferred under section 4 of the Act, the Government of Maharashtra issued a notification dated 10th December, 1987 which was replaced by a subsequent

notification dated 13th October, 1999 substantially

in the same terms :

The notification dated 13th October, 1999 reads as

:

AGRICULTURE, ANIMAL HUSBANDRY, DAIRY

DEVELOPMENT AND FISHERIES DEPARTMENT

Mantralaya Annexe, Mumbai 400032 dated 13th

October, 1999.

MAHARASHTRA MARINE FISHING REGULATION ACT, 1981

1. No.Lavesui.499/14141/(CR-88)DF-14-In exercise of the powers conferred by sub-section (1) of section 4 of the Maharashtra Marine Fishing Regulation Act, 1981 (Mah.LIV of 1981) the Government of Maharasahtra having regard to the matters referred to clause (a) of sub-section (2) of the said section 4, after consultation with the Advisory Committee constituted under section 3 of the said Act, hereby directs that, -

(1) No purse-seine gear shall be operated by any mechanised fishing vessel within the territorial waters (12 nautical miles) of Greater Mumbai, Thane, Raigad, Ratnagiri and Sindhudurg Districts ; and

(2) no mechanised fishing vessel operating the purse-seine gear beyond the territorial waters (beyond 12 nautical miles) shall and the catch of fish caught by such gear in any port other than the Mirkarwada (Ratnagiri) porot in Ratnagiri District.

By order and in the name of
Governor of Maharashtra.

A.Q.Shaikh
Deputy Secretary to Government

5. The restriction on the use of pourse seine gear for fishing obviously restricts the fundamental right of a person conferred under Article 19 (1) (g) of the Constitution of India, to carry out any occupation, trade or business. Therefore, the restriction imposed by the notification issued by the State Government under section 4 would have satisfy the test of reasonbleness as laid down under clause 6 of Article 19 of the Constitution of India. WEe proceed to consider whether the notification satisfies the test of reasonableness and whether it was issued by following the procedure laid down under sections 3 and 4 of the Act.

6. Sub section 2 of section 4 of the Act prescribes the matters which would be required to be taken into consideration by the State Government before passing of an order under sub section 1 of section 4 regulating, restricting or prohibiting fishing. A further procedural safeguard has been added under section 3 of the Act which requires the State Government to constitute an Advisory Committee which is required to be consulted before passing of order under section 1 of section 4

regulating, restricting or prohibiting fishing. The Advisory Committee to be constituted under section 3 of the Act is required to coopt the representatives of the fishermen and trade. The object of coopting the representatives of the fishermen obviously is to give to the fishermen who are likely to be affected by the order, an opportunity of being heard in the meetings of the Advisory Comittee which is required to be consulted before an order regulating, restricting or prohibiting their fundamental right to carry on any occupation, business or trade (namely fishing) is passed. It is the grievance of the petitioners that no representative of the fishermen carrying on fishing with purse seine gear was coopted in the Advisory Committee constituted under section 3 of the Act. They were not heard and no opportunity of hearing was given to them nor were their views considered. The impugned notifications vitally affect the petitioners and their right to carry on trade and their right of livelyhood and therefore their representative should have been coopted on the Advisory Committee or they should have been heard before issuing the notifications prohibiting fishing by use of purse seine gear (or net). It is not disputed that the representative of the

fishermen using purse seine gear was not co-opted on the Advisory Committee. The learned AGP, however, contends that the representative of the apex body of cooperative societies of fishermen was co-opted on the Advisory Committee and the Committee was consulted before issuing of the notifications. He submits that section 3 of the Act does not require the representatives of each type or kind of fishermen be appointed on the Advisory Committee. The Advisory Committee was properly constituted by coopting one representative of the traditional fishermen who represented all the fishermen .

7. In para 3 of the affidavit dated 25th February, 1988 sworn by Mr. Bhalchandra Vithal Thete, Deputy Director of Fisheries, it is stated that because of catching of fish by use of purse seine gear, the sea had become totally bereft of fish and small fishermen who use the traditional nets for their catch were affected and the Government had received number of complaints requesting it to protect the interest of traditional fishermen. By reading this affidavit as a whole, it appears that the impugned notifications were issued for two purposes viz (i) protecting marine life and (ii) protecting the

traditional fishermen who carry out fishing along the coast by using traditional nets. The representative of the traditional fishermen using traditional nets was part of the Advisory Committee. The persons (traditional fishermen) whose interests were to be furthered by issuance of the notifications had their representative on the Advisory Committee but the persons who were likely to suffer by reason of the prohibition to use purse seine gear were not represented on the Advisory committee. We find it difficult to accept the submission of the learned AGP that the Advisory Committee was properly constituted, because the very object of coopting the representative of fishermen was to give an opportunity to the persons who were likely to be affected by the regulation, restriction or prohibition to be imposed under section 4 and considering their views. The persons who were interested in imposing the prohibition (and who are the beneficiaries of the notification) were given representation while the persons who were likely to be affected by the notification were denied representation on the Advisory Committee denying the very object of co-opting the representative of the fishermen. We must interprete section 3 of the Act keeping in mind the

provisions of Article 19 and 21 of the Constitution of India. Article 21 of the Constitution of India confers a right to life which has been interpreted not more physical existence but the right to live with human dignity. Means of livelyhood are necessary to live with human dignity. Though right to life is yet to be expanded to include right to work, any state action which deprives a person of his existing or traditional source of livelihood and work would have to strictly pass the test of reasonableness embodied in clause (6) of Article 19 of the Constitution of India. Any state action making an inroad on the persons's right to carry on his usual occupation, trade or business would be eschewed unless the restriction is strictly required in the interest of general public and strictly satisfies the test of reasonableness. Restriction would not be reasonable if it is more than necessary. If the Statute (section 4 of the Act) requires consultation with the Advisory Committee and also requires the representative of the fishermen to be included in the Advisory Comittee (section 3 of the Act) then the representative to be coopted must be of the fishermen likely to be affected by imposition of the restriction. Such a construction of section 3

of the Act would be in consonance with the spirit of Article 19 and 21 of the Constitution of India and rules of natural justice. As the Advisory Committee did not include the representative of the fishermen using purse seine gear with mechanised boats the constitution of Advisory Committee was not proper and there was no proper and effective consultation with the properly constituted Advisory Committee before issuing of the impugned notifications banning and prohibiting use of purse seine gear with mechanised boats.

8. Learned AGP also submitted that the impugned notifications were issued for the purpose of preservation of marine life in the shoals of Ratnagiri district. In the affidavit of Mr.Bhalchandra Vithal Thette, Deputy Regional Director of Fisheries sworn on 25th February, 1988 it is further stated that the purse seine gear is not suitable for being used in shallow shoals which are found only around Ratnagiri coast because they result in abnormally large quantities of fish being caught upsetting the operations of the traditional fishermen as well as denuding the entire shoals of fish and therefore the restrictions were imposed on use of purse sein gear to preserve certain

varieties of fish found in the shallow shoals in the district of Ratnagiri. The preservation of fish in the shoals of Ratnagiri may be conducive to the environment and the prohibition against use of purse sein gear would be sustained if it is proved that use of purse seine gear could result in elimination of fish in the shoals of Ratnagiri district. The affidavit itself however says that such shoals are found only around Ratnagiri coast and in no other coastal district of Maharashtra. The impugned notifications dated 10th December, 1987 and 13th October, 1999 prevent use of purse seine gear by mechanised fishing vessels not only within the territorial waters of Ratnagiri district but in all the five coastal districts of Maharashtra namely Greater Mumbai, Thane, Raigad, Ratnagiri and Sindhudurg. If as per the Government's own affidavit, the restriction on use of purse seine gear was necessary for preservation of marine life only in the shoals of Ratnagiri district, then we see no reason why the notifications should prevent the use of purse seine gear in the remaining four coastal districts of State of Maharashtra, namely Greater Mumbai, Thane, Raigad and Sindhudurg districts where the prohibition on its use is not necessary for

preserving the marine life. It is not shown to us that ban on the use of purse seine gear by mechanised fishing vessels was necessary for protecting the marine life in the said four coastal districts of Maharashtra excluding Ratnagiri district. The absolute ban on the use of purse seine gear by mechanised vessels in all the coastal districts, without there being any need for preserving marine life, appears to us to be unreasonable restriction on the petitioners' right to carry on trade under Article 19(1)(g) of the Constitution of India.

9. It is not disputed that no restriction can be put on the use of purse sein gear beyond the territorial waters of India. It was pointed out to us that the prohibition for use of purse sein gear imposed by the notifications dated 10th December, 1987 and 13th October, 1999 was only for use of purse sein gear within the territorial waters and the petitioners were free to use the purse seine gear for catching fish beyond the territorial waters. We, however, see no reason for further restriction put by para 2 of the notifications dated 10th December, 1987 and 13th October, 1999. Paragraph no.2 in both the notifications is similar

and provides :

> "No mechanised fishing vessels operating purse seine gear beyond the territorial waters shall land catch of fish by such gear in any port other than the Mirkarwada (Ratnagiri) port in Ratnagiri District.
> (underlining supplied)

No explanation has been offered why the entire fish caught by use of purse sein gear by mechanised vessels in the sea beyond the territorial waters must be landed only at Mirkarwada (Ratnagiri) port and at no other port on the entire coastal line of Maharashtra. The restriction of not allowing the fish caught outside the territorial waters to land on any port other than Mirkarwada is not shown to have any nexus with the alleged object of the notifications viz. preserving marine life or protecting traditional fishermen. The restriction imposed by paragraph 2 of the impugned notifications also is violative of Article 19(1)(g) of the Constitution of India.

10. For the reasons stated above, we strike down the impugned notifications dated 10th December, 1987 and 13th October, 1999 at Exhibit A and

Exhibit B to the petition. Rule made absolute accordingly.

11. All concerned to act on a copy of the judgment authenticated by the court sheristedar.

D.K.DESHMUKH, J

D.G.KARNIK, J